

DMR ADVISORY COUNCIL MEETING
January 19, 2005, 1:00 p.m.
Draft Minutes

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Department of Human Services Central Offices Conference Room, 442 Civic Center Drive, Augusta. AC members attending this meeting included **Dana Rice, Sr. - Chair, David Turner – Vice, Larry Knapp - Secretary, David Pecci, Craig Pendleton, Bill Sutter, Dana Temple, Chair and Al West.** Council members **Rod Mitchell, Blair Pyne, Ralph Smith, Mike Danforth, Scott Tilton and Allyson Jordan** were unable to attend. Department staff included Commissioner George Lapointe, Deputy Commissioner David Etnier, Col. John Fessenden, Linda Mercer, Margaret Hunter, Samantha Horn Olsen, Mary Costigan and L. Churchill. Other attendees included Jeff Ramano (Maine Coast Heritage Trust).

1. Welcome

Chair Dana Rice welcomed everyone to the meeting. The Chair asked for the nominating committee recommendations for election of officers to serve in 2005. Nominations put forth were Dana Rice to continue as Chair, Al West for Vice Chair and Dave Pecci was nominated for the position of Secretary.

Motion: *(D. Turner, C. Pendleton) Motion to approve the slate as nominated.*

Discussion: None

Motion continued: *Unanimous to approve.*

2. Approval of minutes

Two corrections were noted by staff.

Motion: *(D. Turner, C. Pendleton) Motion to approve the minutes as corrected for the meeting held December 8, 2004.*

Discussion: None

Motion continued: *Unanimous to approve*

3. Regulations - Action (voting) (see handouts)

Chapter 45.05 Shrimp Season

Margaret Hunter provided a synopsis of the rulemaking and its development.

D. Temple asked if the industry expects to catch all 2500 metric tons.

M. Hunter indicated that is uncertain. The season has started slow with the price at approximately 60 cents per pound so far. The shrimp have not moved inshore yet. So far the fishermen are optimistically waiting.

Motion: *(B. Pyne, L. Knapp) Motion to accept the rulemaking for Chapter 45.05 as written.*

Discussion: none

Motion continued: *Unanimous to approve*

Chapter 2 Aquaculture Lease Regulations

Samantha Horn Olsen, DMR Aquaculture policy coordinator, gave a brief run down of the history and development of the rulemaking and briefly reviewed the highlights of concern from the hearings and rulemaking written comments. See summary of comments in handout.

Motion: *(C. Pendleton, D. Pecci) Motion to accept the rulemaking for Chapter 2 as written.*

Discussion:

D. Turner served on the Governor's Aquaculture Task Force (TF) committee. The conservation land distance at 1,000' is much different from the 1-2 miles prior Task Force recommendation. Shackford Head in Eastport for example has three aquaculture leases within 1,000' and will they be grandfathered?

M. Costigan: Leases may still be within 1,000'; the locations may be reviewed as before when the leases come up for renewal or transfer; this has not changed.

Commissioner Lapointe: We've done a number of renewals recently

D. Turner: This will cause problems with new entrants. I didn't agree with the TF either that set it up for the environmental groups.

Comm. Lapointe: The TF was set up for commercial fishermen too; we can't go back to 1985 and the TF results would be worse if we had not gone through the TF process.

D. Turner: Now we have to pick between the lesser of two evils and go back to the Legislature.

Comm. Lapointe: No one likes it. The fee structure had to be addressed.

M. Costigan: The 1,000' provision for conservation lands is statutory, [which cannot be changed by these regulations].

D. Turner: We're piling on more regulations making the rules for new entrants from large businesses versus the little guy who has been displaced out of other fisheries. He read the written commentor's letters and those who spoke at the hearings were either opposed or neutral. The gear removal [fallowing] for no biological reason is expensive and hits the leaseholder hard. The prescoping sessions and fallowing are needed but...The harbormaster requirements appears we're making rules for towns to have to hire harbormasters, which some towns don't want to have to pay for a harbormaster.

S. Horn Olsen: Clarification on fallowing; the Legislative committee hesitated to go beyond 300 acres. The use of fallowing was a way to go beyond 300 through rotation of use that is allowing other users to come in versus fallowing for biological reasons only.

D. Turner: This is bureaucracy building.

L. Knapp: The aquaculture rules are difficult to understand; not much where I fish. Going on the direction D. Turner who indicated this is a bad thing. The industry is against. I'm not feeling qualified to address.

Comm. Lapointe: Shellfish and finfish aquaculture are conducted differently. The finfish aquaculture Downeast started as Mom and Pop type sites, but the markets have driven the finfish to higher levels. Shellfish are different. Yes, we're in a less free environment. There have been environmental and user problems. Regarding fees, we worked with the industry and the Legislature on that issue. It is a complex situation. Look at groundfish or lobster; we have plenty of rules on lobster fishing.

B. Sutter: What are the benefits of aquaculture to Maine as a whole; if it is no good then why have it?

Comm. Lapointe: Again, we separate shellfish from finfish. Finfish value was about 13 million (?) last year and there is 2-3 times that amount that goes in to the Maine economy. The goal should be for both the shellfish and finfish industries to allow economic diversification and sustainable employment. These are tough times with the market prices changes downward since a few years ago.

B. Sutter: But most are owned by Canada. The money is going to Canada versus some local help. The total benefit to us may not be as great.

S. Horn Olsen: The Department of Economic and Community Development (DECD) goal is to restore integration of the finfish industry in Maine. They haven't had the volume to support integration in Maine, [i.e., hatcheries through sea based grow out, harvest and processing.]

B. Sutter: That's the source of economic benefits....

Comm. Lapointe: If the regulatory climate is tough in Maine the federal process is impossible next to ours.

D. Turner: In Eastport there were only 3 persons from the public who attended the hearings. Old Heritage had 200-300 employees. Now they have 50 persons there. It's not just the DMR and the Legislature. It is the price in Chile plus more rules coming. Look at what's been spent on the wild salmon issue.

L. Knapp: There is a comparison similar to shrimp traps – not cost effective to do.

Comm. Lapointe: That's getting off target; regarding shrimp, that fishery was closed or 3 years in the 70's because it was so hammered. So we set up a season to take what could be responsible biologically, which has an economic impact. Persons asked to expand. We can't make markets. It will take awhile for markets to come back and we shouldn't subsidize. We can't help that they are raising a lot more elsewhere driving the price down.

The markets for shellfish are doing well. Dr. Steneck [University of Maine] recently reported if the lobster industry drops the industry needs alternatives to allow diversification. The Governor's Natural Resource

council was created to look at these types of issues. Lease applications are becoming much more “lawyerly” and if we do nothing the Legislature may take it in another direction. The Task Force and the Legislature may create cumbersome rules and we are trying to get people to talk about the facts ahead and deal with perceptions versus hyperbole as in the past. This is why we have packages like this today.

Chair Rice: It seems as if the little guy can’t participate.

B. Sutter: What is the alternative?

D. Turner: As much as I oppose this, they are preferable to what could be written by the Legislature. Some of the rules I just do not agree with.

Motion continued:

Affirmative votes: D. Temple, B. Sutter, D. Pecci, D. Rice, C. Pendleton, A. West

Negative votes: D. Turner

Abstention (non-affirmative): L. Knapp

The motion passed by a majority of affirmative votes.

B. Sutter: How do you respond when everyone who comments is opposed to the regulation?

Comm. Lapointe: We have to use a basis statement, what is in the Legislation [the statutes], look at the TF recommendations and commitments made. Staff worked with industry and other staff for example on the fees. We reviewed the program impacts again in the course of our discussions. Examples were described and then try to make the best decision. We have to meet with the Legislators next Monday on the budget. We rely now more on fees than in the past and we wish we weren’t there.

C. Pendleton: For several meetings in a row the Advisory Council has had lousy choices to make. This process here should be discussed further.

Comm. Lapointe: When this was developed there was a large amount of communication with industry and then they changed their position in the end. I recommended to the Governor to use the Task Force and with much involved spent a year looking at these issues from a number of perspectives. It would be better to identify what you want. No one likes more fees. We can talk with the Marine Resources Committee or industry and ask how we move forward. Instead of saying we hate the entire package we must realize how to compromise.

A. West: From the perspective as a Council member and being in the aquaculture industry 27 years ago the same issues were around 25 years ago. If they had been dealt with then we wouldn’t have crisis management now. It will be that way until all parties are placated. This is important to keep in mind when voting.

D. Temple: I’ve not lived here my whole life but Mainer’s want it to stay as “Maine” but we’re in a global situation. This is like wanting your cake and eating it too but it doesn’t work that way. Would salmon farms complain at the \$4.50/lb from years ago? No; no one likes taxes, but people move here from New York where they are raising taxes. If you do anything it makes more sense to work within the system. If federal funding of four hatcheries along the coast can be done through federal funding then this is only a drop in the bucket comparatively. Be players versus not participating.

Chapter 2.37(1)(A)(9-10) Decision Standards - Noise and Visual Impact

S. Horn Olsen reviewed the regulations, which are major substantive and will require Legislative review. This rulemaking originally contained the standard for lights that has been removed due to significant problems. We will be back in April after further separate rulemaking on lighting. This rule covers noise and visual impacts. These are also legislatively mandated and largely drawn from the Task Force (TF) recommendations. Originally the legislation contained a numeric standard for noise, a decibel level that was removed. Noise would now be handled through mitigation. The visual standards exclude watercraft that is not permanent.

Motion: (C. Pendleton, D. Turner) Motion to reject the rulemaking for Chapter 2.37(1)(A)(9-10) as written.

Discussion:

C. Pendleton: If you build a house next to a pig farm it will smell; like boats at the piers in Portland or Saco then residents complain.

B. Sutter: The complaints from Blue Hill we discussed with the TF. This is part of that attempt to include those peoples concern and maintain an industry.

L. Knapp: Doesn't the nuisance law cover this?

Comm. Lapointe: Aquaculture was excluded from that law.

L. Knapp: Examples cited similar to C. Pendleton. They should just sign a piece of paper.

D. Turner: When this started the legislation included 45 decibel limit and was hard to get down. Mowing your lawn has higher noise than 45 decibels. This is slippery slope. We should go back with the lighting.

Comm. Lapointe: Regarding Craig's analogy it is the pig farm that is put in next to you and with salmon it can be a big business. Swanson for example painted a large barge white. At Black Island you couldn't see the site at all because all the materials were black. The next year they used orange and it stood out.

Swanson put silencers on his mufflers. Another ridiculous extreme: one mussel grower played a loud radio.

C. Pendleton: Agree but they should be looked at on a case by case basis. Passing this opens doors to something worse. We've had people who don't want traps in my door yard.

B. Sutter: Noise: They should use commercially available materials otherwise someone could take them to task. There is nothing here that is beyond reasonable. Such as mufflers on equipment and these are commercially available things. Leases are at fixed locations and people must be able to live with the activities and not be detrimental to operations.

S. Horn Olsen: We had a noise complaint recently about a fixed salmon site. We talked with the facility employees and found the issue was already being addressed. It was a particular generator just added to the facility. If the previous proposal of using a decibel level had become law we wouldn't always get that kind of response.

D. Pecci: This may be oversimplification but what is proposed seems to be local issues and shouldn't be handled by state rules or legislation. Why state wide?

Comm. Lapointe: Regarding the TF it is something versus no aquaculture. Many are mussel rafts and these are located in state waters not town waters.

D. Pecci: Clam diggers in Brunswick and airboat example...

L. Knapp: To the Commissioner: if passed, can the town be more restrictive?

Comm. Lapointe: Regarding noise on the water you have a lobster boat versus a generator and when controversy is going on it is easy to get people against something. They are the waters of the State of Maine.

D. Temple: Who is complaining, Mainer's or people from away?

Comm. Lapointe: All of the above. Salmon sites are big and like other public policy issues it gets discussed with to a bigger extent. He gave an example of person who opposed a mussel raft site because it was in his way of navigating the 70 fathom curve; he was asked if he ever looked up when navigating? This has become a lighting rod.

A. West: Who decides compliance with these rules?

M. Costigan: This is a broader issue since these rules pertain to the initial decision criteria. We have to look at what we need for compliance based on the application information provided before a site becomes operational. Ultimately it is the Commissioner's decision.

S. Horn Olsen: All leases would eventually fall under this. We don't always have every thing up front.

D. Turner: The aquaculture industry didn't really object from where the rules were scaled down from; my concern is the stepping stone affect from this and it snowballs. Most points are livable except a few items however the stepping stone issue is serious.

B. Sutter: The reason for the TF was to deal with all parties concerned. Whether the rules are appropriate or not those groups can still go to the Legislature. These rules are reasonable. To not adopt these would be to fail the charge by the Legislature. If not passed then they would have to go back to the Legislature and that could result in anything. These are probably the best effort that can be lived with. Regarding the stepping stones concerns that can still happen with the Legislature anyway.

C. Pendleton: Limiting colors schemes because they are offensive crosses boundaries for me.

L. Knapp: Could this be controlled within the original agreement?

B. Sutter: It is all done in the new applications anyway.

M. Costigan: The decision standard is for no unreasonable impact.

S. Horn Olsen: What came out of the TF meant the public view from the water.

D. Temple: Similar reaction to Craig's. These rules set up guidelines so there is something to go by. Some control but not incredibly unreasonable. It makes sense to do this. If one is taken to court then these would

help the aquaculturists. Landowners tend to have more money and lawyers; the Sierra Club for example and visual pollution. It is better to have standards versus potential litigation.

C. Pendleton: The motion being considered is to reject the rulemaking for Chapter 2.37 as written.

Motion continued:

Affirmative votes: L. Knapp, D. Turner, C. Pendleton

Negative votes: A. West, D. Temple, B. Sutter, D. Pecci, D. Rice

The motion failed by a majority of non-affirmative (negative) votes.

Motion: (D. Temple, B. Sutter) Motion to accept the rulemaking for Chapter 2.37(1)(A)(9-10) as written.

Discussion:

B. Sutter: He indicated that he agrees with D. Turner now because the Legislature has the where-with-all to make this not as reasonable as written. This would be the lesser of two evils.

Comm. Lapointe: Since these are defined as major substantive rules they will go back the Legislature's Marine Resources Committee. The discussion here today will be made clear to the committee.

L. Knapp: He's fought these elitist groups all his life and this hasn't stopped them today.

Chair Rice: It is better to have something than nothing and this is said as a town official and harbormaster even though his sentiments are with D. Turner.

B. Sutter: Described an example using Sears Island.

D. Turner: You can't keep piling the regulations on the aquaculture industry, especially Downeast.

Motion continued:

Affirmative votes: D. Temple, B. Sutter, D. Pecci, D. Rice, A. West

Negative votes: L. Knapp, D. Turner, C. Pendleton

The motion passed by a majority of affirmative votes.

4. Other Business

Annual Research Plan – Sub Committee report (see handout)

Linda Mercer, Director of the Bureau of Resource Management indicated that the sub-committee members C. Pendleton, B. Sutter and A. West met the previous week to discuss the research agenda. The updated report was provided and discussed. The next step is to provide copies with a letter from the Chair of this Council to the Marine Resources Committee.

C. Pendleton reviewed his notes on the sub committee meeting: The future emphasis is on ecosystem approaches to fisheries management. This will cause us to need new and different types of science and research and new data streams. The #1 concern and commitment is for public health and safety. The prior draft of the report did not represent a comprehensive plan. The budget cuts and staff over commitment are detrimental to the State's research concerns. The Department did not include a strategic plan to fund the inshore groundfish trawl survey. There was no focus on the groundfish "B" day's opportunities. Shrimp research priorities were not clear relative to the economic importance to the State. The State needs to say no. Everyone is interested in doing collaborative research can not be allowed to add DMR as a partner. The sub committee remains concerned regarding research priorities and allocation of financial resources to research. The Department should look into research surcharges to license fees in all fisheries in order to keep pace with research needs. We need to host priority meetings again like several years ago.

B. Sutter: The monitoring for water quality etc by the Department is not research activities, it is management. The research described should be day to day work looking in to unanswered questions. We wanted to see the research topics identified and prioritized and how funded. Then look to the Legislature to find ways to fund.

Chair Rice: Will C. Pendleton's points be included in the letter?

B. Sutter: Put research efforts a step higher then a discussion ought to take place. Funding is unknown. Start from square one; the meetings might help.

L. Knapp: I would now resent any of my money going to research. At the last lobster council meeting there was talk about effort reduction. This opens doors. The eastern part of the state could use dogfish processing for example.

B. Sutter: Research does change regulations.

Chair Rice: For example we need data to change this.

C. Pendleton: As efforts emerge the ecosystem approach will illuminate a new way of monitoring in the future.

B. Sutter: The Department should pursue research and find vehicles to fund.

L. Mercer: Will draft the letter with the recommendations.

Motion: (D. Turner, C. Pendleton) Motion to write and forward letter to the Marine Resources Committee as discussed.

Discussion:

B. Sutter asked that the letter be emailed to the council members or sub committee.

L. Mercer: We should be hesitant to add lots to the Marine Resources Committee requests and to promise to cover all species being reviewed with no additional resources.

B. Sutter: The message is funding is not available and we can't do it without funding.

Chair Rice: I will write the letter with L. Mercer and distribute tomorrow.

D. Pecci: The harsh reality with Appropriations and requesting funding.

D. Temple: The wording is important. Research for the right reasons and to get people to work is better.

C. Pendleton: There is no intent here to put Linda on the spot. Much of this is from a more personal point of view.

[Commissioner Lapointe had to depart and Deputy Commissioner Etnier took his place.]

B. Sutter: How do we approach the Marine Resources Committee (MRC) from this council?

Deputy Commissioner Etnier: Their next meeting is Monday, January 24th at 10:00 a.m. to review the 06-07 biennium. Then the MRC and the Appropriations Committee meet jointly starting at 1:00 p.m.

A brief discussion followed about what would take place during the MRC meetings on budget versus the annual research agenda report.

D. Pecci: the timing may not be right and the effectiveness questionable.

B. Sutter: The only risk is that we stand up and they implement fees that are used for other things.

C. Pendleton: It is better to speak than not.

Dep. Comm. Etnier: Reviewed the budget outline. Discussion

B. Sutter: What will fund the landings program after the federal money is gone?

Dep. Comm. Etnier: That is unknown however we have to reapply for the federal funds each year also.

Chair Rice: There are many things we would like done and as commercial fishermen we have to keep driving home the point with the committee's and Legislature that we're losing our ability to go fishing more and more.

Updates

L. Churchill: upcoming proposed regulations and cancellation of the February meeting.

Motion: (C. Pendleton, A. West), the Council voted to adjourn.

Motion continued: Unanimous to approve